

## **EXHIBIT 1**

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

APOTEX, INC.,

Plaintiff,

v.

CEPHALON, INC., et al.,

Defendants.

CIVIL ACTION

No. 06-cv-2768-MSG

**CEPHALON, INC.'S REPLY IN SUPPORT OF ITS MOTION FOR LEAVE TO FILE A  
CONSOLIDATED SUMMARY JUDGMENT OPPOSITION BRIEF ON PATENT-  
RELATED ISSUES AND SEPARATE RESPONSES ON OTHER ISSUES**

Apotex will not need to respond to 80 pages of briefing and Cephalon's proposal decreases, not increases, the total number of pages afforded to Cephalon for its oppositions. Apotex misunderstands Cephalon's proposal and miscalculates the relevant pages. Under the proposal, Cephalon's briefing will be *reduced* from 110 pages to 95 pages. As the proposal will streamline the issues for the Court in an efficient manner, and will not prejudice Apotex or any other party, Cephalon's motion should be granted.

Cephalon proposes that it file a consolidated opposition brief, not to exceed 65 pages, covering *all* patent-related issues raised by *all* of the Plaintiffs' several motions for summary judgment, rather than file multiple repetitive or overlapping briefs addressing these related issues. Cephalon's anticipated consolidated opposition will address not only the issues presented by Apotex (e.g., application of law of the case and Seventh Amendment), but also the other patent-related issues raised by other plaintiffs (e.g., whether there is an absence of genuine issues

of material fact compelling summary judgment on certain patent-related issues even if estoppel does not apply, and relevance of patent issues under *Actavis*). Apotex obviously need not reply to arguments that do not concern the arguments raised in its motion. Nevertheless, because those issues are related and intertwined, in that they all address the antitrust implications of the Court's patent ruling, and it would greatly aid the Court's assessment if they were addressed in a single presentation, rather than scattered among four distinct briefs with unnecessary and inefficient repetition.

In response to the market definition and monopoly power arguments that are unique to Apotex's motion, and that are unrelated to the patent-related issues in the motions by the other plaintiffs, Cephalon proposes a separate opposition, not to exceed 15 pages, focused on those issues.

Apotex claims that Cephalon seeks to *increase* the total pages for its oppositions, but Apotex miscalculates the number of briefs and total number of pages at issue. Cephalon will oppose five motions, not four (the Direct Purchasers filed two, separate motions for summary judgment, totaling 60 pages). Cephalon does not seek any modification of the page limitations for its opposition to Direct Purchasers' conspiracy brief; thus, the 25 pages for that brief is irrelevant and not part of Cephalon's motion. The remaining four motions each concern patent-related issues—for which they were entitled up to 110 pages in length—and Cephalon, in turn, would now be entitled to 110 pages of total briefing for its oppositions (the Court allowed for a 35-page opening brief and opposition for Direct Purchasers' patent-related brief). Cephalon's proposal, however, calls for just 95 pages of briefing organized across three briefs to respond to the four motions filed by the plaintiffs.

Cephalon's proposal is intended only to simplify the presentation of issues to the Court, not to secure additional total pages of briefing. Moreover, Cephalon readily agreed to the other plaintiffs' request that they be allowed up to 20 pages for their respective replies, and is prepared to do the same for Apotex. And if, after reviewing Cephalon's briefing, Apotex believes 20 pages are insufficient to reply to the arguments raised by Cephalon, it should simply raise that issue with Cephalon at that time and seek leave of the Court.

Date: November 1, 2013

Respectfully submitted,

/s/ James C. Burling

James C. Burling

Peter A. Spaeth

Mark A. Ford

WILMER CUTLER PICKERING

HALE AND DORR LLP

60 State Street

Boston, MA 02109

T: 617-526-6000

F: 617-526-5000

John A. Guernsey

Nancy J. Gellman

CONRAD O'BRIEN PC

Centre Square West Tower

1500 Market Street, Suite 3900

Philadelphia, PA 19102-2100

T: 215-864-9600

F: 215-864-9620

*Attorneys for Defendant Cephalon, Inc.*